

**UBUNTU: AN AFRO-PHILOSOPHICAL AND LEGAL IMPLICATION OF
LEVIRATE MARRIAGE IN AFRICAN CULTURES**

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Abstract

African scholars have found themselves in an array of doctrinal and cultural dilemmas, especially after the 19th and 20th-century European missionary expeditions that ushered in a vibrant Christian movement in Africa. The new Christian religion was, on arrival, largely dismissive of religio-cultural dialogues with the local Africans. One of the most contested subjects that went beyond the missionary era and reverberates across the twenty-first century is the practice of wife inheritance, otherwise known as “levirate marriage.” The missionaries continually maintained that wife inheritance, especially where the male inheritor is already a married man, is a sin. African people respected marriage to the extent that they tried to protect it at all costs. One of the protective measures was the introduction of levirate marriage, in which the deceased’s brother was expected to marry his brother’s widow. Similarly, a man who lost his wife would marry her sister to replace her. Though levirate marriage is practiced in some African communities, current economic and legal realities have come to bear upon its continued practice. Thus, this article aims to examine whether the practice of forced marriage, particularly in instances of the death of a husband, still has a place in contemporary Africa, especially considering the democratic changes that currently hold sway on the continent. The study further highlights the roots of the practice from an Afrocentric philosophical perspective while pointing out its cultural and legal implications given the array of modern local and international legal instruments aimed at the protection of human rights and the rights of women. The paper concludes that having been caught up by modern civilisation, the practice needs to be re-assessed based on extant local and international legal instruments. This would ensure that women are not trapped in marital situations that are contrary to the law. The paper shall adopt a qualitative and analytical research method to interrogate the discourses in Levirate marriages in African cultures.

Keywords: African Culture, Inheritance, Levirate Marriage, Widows, International Law.

Introduction

Several African writers have argued that the African tradition retains levirate marriage as part of the culture, particularly because the widow is regarded as still being married to the family. The practice of Levirate marriage (also known as

widow or wife inheritance) is a common marital practice in many societies in Africa and beyond. According to this practice, a widow is inherited by the brother or other male relative of her deceased husband. While this practice is still observed in many societies in present-day Africa (Potash, 1986; Radcliffe-Brown and Forde, 1987), as seen in Kenya, Nigeria, traditionally, a widow has limited rights to the property of both her natal and husband's families; therefore, her life is highly vulnerable. Furthermore, owing to a customary system of exogamous and patrilocal marriage, a widow's close relatives (e.g., parents, siblings) typically live outside her current residential village and, thus, cannot easily provide her with the protection that she needs, even from the kinds of physical attacks that have become rife in many African societies. In Africa, Levirate unions are found amongst almost all communities from West to East Africa and from North to South Africa. The Igbos of Nigeria, the *Nandi*, *Luo*, and *Kambas* of Kenya, many communities in Zambia, Uganda, and Sudan, the *Supyire* of Mali, the *Akan* of Ghana, and the Yoruba of Nigeria all practiced it. The practice continues up to date in many communities, possibly because of its ancient origin and its perceived value (Mbiti, 1991). Mbiti argues that inheriting the wife of a deceased brother or the husband of a deceased sister ensures that nobody is excluded from marriage (Mbiti, 1991).

One of the reasons in support of levirate marriage was that in African society, very few men would agree or want to marry a woman who belonged to other people who had paid bride-wealth for her (Waruta and Kinoti, 2000). In other words, once a woman was married to another man, not many men would be interested in betrothing her following the death of her husband, a situation which would compel the family to look for someone in the immediate family or clan to take care of her. The practice of widowhood and remarriage within the husband's extended family is common among many African tribes (Ntozi, 1997); as well as in some Asian societies; in Africa for instance, the Fulani of Mali, the Burkinabe, the Kuranko of Sierra Leone, Zimbabweans, Zambians, Namibians, the Luo and Gussi of Kenya, and the Rwandese practice levirate marriage. This practice still prevails among many South Africans, and while some widows acquiesce, others reject it. "In the name of culture or not, I will marry the person I love". These are the words of Reneilwe, who, according to custom, shortly after the death of her husband, was forced by her late husband's family to have sexual intercourse with his younger brother. She was further pressed to marry the young man. As a result, she fled from her home, insisting that she would not be forced to marry someone she did not love. The practice of sexual cleansing forced upon Reneilwe is described as follows by Malungo (1999): "someone has to have sexual intercourse with the spouse of the deceased to chase away the spirit of the dead". As Malungo observes,

the relationship between sexual cleansing and the strong belief in the ancestral spirits is pivotal to a discussion of the ritual of sexual cleansing.

On 29th August 2012, the South African Broadcasting Corporation radio station Munghana Lonene invited listeners to call in to express their views in response to the question, *Xana ntolovelo wo sala mi hlayisa nsati wa buti wa ha ri kona ke, na swona mi ri yini ha wona?* ("Is the custom of a younger brother marrying his deceased brother's wife still practised, and what do you think about this custom?") It is important to note that the *Xitsonga ku hlayisa* (meaning "to take care of") also signifies "to marry." This originated in the belief held by most African tribes that sexual intercourse and marriage were ways of showing compassion to the widow. The very recent nature of this radio discussion is indicative of the relevance of the topic to contemporary society. Although some people may argue that the practice of levirate marriage and its consequences are very old, from the recent story and the radio topic discussed above, we are convinced that the discussion on the topic is still relevant to contemporary people. It is our considered view that since the issue still affects widows in some cultures, it is pertinent to address it, not only from a human rights point of view but also from a cultural and philosophical standpoint. Any culture that dominates or oppresses people within their rights should be interrogated and evaluated.

Levirate Marriage does not appear to be a law from God. It was simply a practice of the people of Israel in the Old Testament times. There are two instances of Levirate Marriage being practiced in the Old Testament, one occurring in the book of Genesis, indicating that it preceded the law. Levirate marriage in that context had benefits because a brother who agreed to marry his sister-in-law would be the sole beneficiary of his brother's estate. This would address the challenge of splitting it with the family. On the contrary, if the levirate union was caused by the need for a boy-child, the child would be named after the deceased's brother and would be considered as his offspring. The aim of this article, therefore, is to reignite the debate regarding this practice, which still subsists in some families and in some cultures. The paper argues that the ancient practice of levirate marriage should be practiced only in limited circumstances, having been caught up by modern civilisation and contemporary realities.

Ubuntu as the Afrocentric Philosophical Underpinnings of Levirate Marriage

Ubuntu is a humanist philosophy, the tenets of which apply to various dimensions of socio-political life in African societies. In this paper, we attempt to apply it to marital practices in Africa, as operational in the Zulu proverb '*umuntu ngumuntu ngabantu*' is the source of the Ubuntu concept. In English, it is translated as "one is a person because of or via others." (Haidarian, 2018) Ubuntu in the African context

is defined in terms of empathy, reciprocity, dignity, humanity, and cooperation to develop and uphold communities that value justice and reciprocal care (Haidarian, 2018). Traditional Ubuntu philosophy is predicated on the idea of a morally pure and ideal spouse, when a person adheres to the cultural values and standards of an authentic African society. The idea that each person's life is intertwined with that of others and the larger world in which they live is at the heart of African metaphysics. All African societies find marriage to be relevant because marriage is the cornerstone of African identity. It forms the basis of the family and community. Upholding Ubuntu philosophy in marriage facilitates and nourishes the African cultural potential in people to act with empathy, reciprocity, dignity, humanity, and mutual care in the service of creating and preserving families in a culture where a person is only considered human through their relationships with other people. Africans are social beings who are in constant contact with one another (Gade, 2017). Thus, as a communion of life and love between two persons, marriage is not only a private affair but also a family and community affair. The support of family members, friends, and community forms a system that is required for its stability and sustenance. This is why Mbiti (1999) argues that in the African traditional system, marriage is a community activity that involves all the members of the society, including the living and the dead (ancestors). Marriage in Africa is seen as the foundation of existence, family, and community. Thus, its validation by family members and the community is essential.

The relationship between marriage, the family, and the community is not difficult to establish; it is an apparent relation. Aristotle had long established this relationship in his book *The Politics*, where he sees the state as an emergence from the community, and the community from the family, which is a union between man and woman. In the traditional African system, marriage is the joining of two families through the union of the man, the woman, and their children (Tutu, 1997). The relationship that exists between marriage, family, and community is such that none can exist in isolation without the other; they are inseparably intertwined. While marriage presupposes family and community, family and community are derivatives or logical consequences of marriage. According to Mbiti (1999), for African people, marriage is the focus of existence. It is the point where all the members of a given community meet: the departed, the living, and those yet unborn. All the dimensions of time meet here, and the whole drama of history is repeated, renewed, and revitalized. Marriage is a drama in which everyone becomes an actor or actress and not just a spectator.

Ubuntu Philosophy as a Basis for Marital Union

The notion of Ubuntu, which means humanity towards others, is said to come from the *Zulu* and *Xhosa* languages. It includes all the virtues that encourage cooperation and a sense of communal sharing among people living in a society. A person who has *Ubuntu* is aware of her place in the universe and so chooses her friends and marriage partners carefully. *Ubuntu* emphasizes the importance of each person standing up for the group from which they originate. The *Ubuntu* ideology is fundamentally based on the African understanding of humans and how they interact with their communities. Africans are naturally generous people who stay glued to their neighbours in solidarity and mutual support. This is based on the idea that we can only fully comprehend what it means to be human through interaction with others. Therefore, what assures the longevity of human society is the union of man and wife, which produces a populace that is loyal to a community. To promote harmony and collaboration between various races, peoples, and ethnic groups. The emphasis on this communitarian spirit as a push against segregation gave birth to the idea of Ubuntu in the 1990s.

Ubuntu's metaphysical principles include respect for others, mutual help, community living, charity, care, trust, and utilitarianism. Ubuntu emphasizes the importance of peace and favours the improvement of the community through marital relations and other forms of community living. The Ubuntu principle is the foundation of how an African exists in the world, and it is linked to marriage because marriage is the bedrock of society. There is no progeny, no society without the marital union of willing adults. Likewise, it is the source of the African tree of knowledge, because parents are the first teachers of culture. Ubuntu, therefore, is the starting point of African ontology (Mbiti, 1969). Since Ubuntu is the cornerstone of African philosophy and cultural communal existence, we will examine that in some detail.

The Relevance of Ubuntu Philosophy in Marriage

The *Ubuntu* ideology, "a person is a person because of others." (Ramose, 1999); in marriage, the man and the woman serve as gender relations for mutual rapport, complementarity, completion, and fulfilment in such a way that greater achievement is recorded when they work together in harmony and mutuality (Moleketi, 2009). In such a relationship, each party assumes a personal identity about the other. Thus, one becomes a husband only about his wife, and one is said to be a wife only about her husband. In other words, a person is a husband because of his relatedness to his wife, and a person is a wife because of her relatedness to her husband. This mutual relationship entails several dimensions of cooperation for the mutual benefit of the partners. It can thus be said that there are consequences that follow on account of this relationship. In *Ubuntu* ideology, these

consequences in the African traditional sense entail various levels of cooperation. Accordingly, the *Ubuntu* ideology engenders social harmony, which provides the African society with utmost stability. An African is a person who lives in a community rather than a rugged individual; even if attachment to a community entails adverse consequences, the shared sacrifices serve as a buffer for everyone because of the collaboration of the community in demonstrating care and concern for everyone (Adidi & Irabor, 2019). The *Ubuntu* philosophy is reflected in the marriage relationship because no one marries oneself. Thus, just as *Ubuntu* holds that “a person is a person because of others (Moleketi, 2009), a spouse is a spouse because of another. Hence, *Ubuntu* philosophy is implemented by way of African cooperative culture.

The *Ubuntu* philosophy holds that social cohesion gives African society its greatest stability. An African is not a solitary individual but a member of a community, and this equally applies to the marriage relationship. This is because of the community's cooperation, mutual care, and concern; all the adverse effects of a poor cultural community would persist in a group that is hostile to one another. The practice of *Ubuntu* philosophy in marriage manifests in compassion, reciprocity, dignity, humanity, and mutual interests in building and preserving justice in a spirit of cooperation; kindness and love between married couples become a pivotal root of the African communal life (Nghibu & Elechi, 2022). It demonstrates the interconnectedness, common humanity, and the responsibility of individuals towards others (Moleketi, 2009). Thus, it plays an important role in an African marital relationship. Africans are social creatures who take pride in consistently showing generosity to others within the community. Moreover, it is only through close and intimate interactions with other people that we may truly understand what it means to be human. Such an intimate relationship belongs to the essential nature of marriage.

Traditional African Perspective of Levirate Marriage

Cultural differences in marital practice or traditional customs are enacted to preserve certain liberties or affordances. Levirate marriage is a form of marriage that has been practiced across the world, including the Americas, Asia, the Middle East, Africa, and Australia (Khomba & Kangaude-Ulaya, 2013). Levirate marriage is a union between a widowed woman and her brother-in-law, which occurs at the death of her husband (Weisberg, 2009). The brother of the deceased husband of the woman is referred to as the *levir*; cultures that engage in levirate marriage tend to share commonalities; these include a pastoralist-based economy (or some form of simple agriculture), the use of bride-wealth or bride-service to acquire a bride, the practice of exogamous marriage, patrilineal descent, and patrilocal living arrangements (Weisberg, 2009).

Levirate marriage in African culture was for the sole purpose of bringing up the deceased's children. Male children born in levirate marriages were qualified to be allocated landed property. Inheriting land was a sign of recognition and acceptance by the clan and indeed an affirmation of the right to proprietary interest in the community's landed property. Additionally, levirate marriages were to protect the widows. In some African contexts, it was meant to protect the widow from illicit sexual activities. Thus, after the burial of the deceased, the kinsmen would appoint a man to take care of the widow; and notably, they chose the deceased's brother; and if the brother was dead or too young, any other interested member of the immediate family or clan would be appointed to inherit the woman.

Levirate marriage is a tradition that has been around since ancient times. One of the earliest known mentions of the levirate is in the Hebrew Bible. In Deuteronomy 25:5, it is stated that when two brothers reside together and the wife of one die, having left no son, the surviving brother of the deceased should take on the duty of *levir* to marry his brother's widow. The book of Deuteronomy further states that the firstborn son of a levirate union will be considered the child of the deceased husband as to keep his name alive. In the Hebrew bible, conversations around levirate marriage are favourable to the woman as it allows her to advance her deceased husband's family line and improve her economic circumstances, as she would otherwise not be entitled to her deceased husband's property. The *levir*, on the other hand, may be disadvantaged by the union, as the children of the new union would legally belong to the deceased brother. Therefore, any property the *levir* maintains, including what he inherits from his deceased brother, would be passed along to children that are biologically his, but not legally recognized as his children. However, refusal to engage in a levirate union would result in a ritual of release in which the *levir* would be shamed for not adhering to his duty to his brother.

Levirate unions in Africa closely resemble the biblical image of the practice. In Africa, the purpose of the practice was to provide sons who would continue the deceased husband's name and inherit his property (Weiberg, 2009). A levirate union in Africa is not viewed as an independent marriage, but rather as the extension of a woman's original marriage to her now deceased husband. The children within the union do not belong to the *levir* but belong to the deceased husband and are eligible to inherit the property of the deceased (Weiberg, 2009). Levirate marriage in Africa further serves to provide support to the widow, as her new husband was responsible for her upkeep. Africans reject the idea of allowing their property, which was deemed valuable ancestral land, to go to outsiders who

had no ties to it. Therefore, by marrying her brother-in-law, the widow maintains the family identity. Levirate unions in Africa are uniquely different from other cultures, as African cultures also use the levirate as a form of sexual control. By entering a union with her brother-in-law, the widow has access to a socially acceptable sexual partner, which protects her from seeking out sexual gratification in culturally shameful ways, such as maintaining multiple sexual partners, which could be likened to prostitution (Maurice, 2014).

The Igbos of Eastern Nigeria exemplify an African culture that practices levirate marriage. The role of the *levir* was to father children, manage property, assist in maintaining the household, as well as provide labour and help with farming activities (Korieh, 1996). As mentioned earlier, cultures that permit the practice of levirate marriage tend to be patrilineal, engage in bride wealth or bride-service, and practice exogamous marriage. The Igbo demonstrate these characteristics, as marriage is legitimized with the payment of bride-wealth. Bride-wealth refers to the exchange of goods, such as money or livestock, from the groom's family to the bride's family as compensation for the loss of her contribution to her family through labour.³⁴ The practice of exogamy, or marrying outside of one's lineage, is also nearly universal within the Igbo society. The Igbo largely practice patrilineal inheritance in which family property is held by the husband of a marital union and is passed down to his sons upon his death (Lavenda & Schultz, 2019). It was not, however, mandatory that a widow enter a levirate union. Women who did not have any male children were the most likely to take a *levir* as they were under pressure to bear male offspring.

On the other hand, women who had male children would be less likely to enter a levirate marriage, as there is already a male child to provide support to the woman and inherit the family wealth. For varying reasons, the practice of levirate marriage in modern Igbo society has been on the decline. Some of the reasons attributed to the decline are economically based; for instance, the unwillingness of *levirs* to devote resources to children not legally recognized as his, and the decreased value of the widow and children in terms of labour due to a decrease in subsistence farming. The decline in farming and labour is also due to a shift in the Igbo economy in which local and international trade has replaced farming as a major source of wealth. The production of palm products for trade also required less labour than the subsistence farming that previously characterized the Igbo economy (Korieh, 1996). However, while there have been challenges to levirate unions as societies change over time, it has had a rich and enduring history in various cultures across the world.

Several African communities have practiced wife inheritance for a long time. For instance, among the Luo of Kenya, the practice is known as *tero* - a practice where the brother-in-law (Jalako, among the Luo) takes the widow. After the deceased's burial, relatives of the deceased would meet and decide who would take care of the widow and children. Once a decision has been made, the chosen inheritor would place his shirt on the widow's door as an indication that he is the new man. The widow did not have the right to choose the inheritor since she was the property of the community on account of the dowry paid. If the widow refused to be inherited, she would be chased away from her family home and would forfeit her late husband's landed property. The Luo care for the widows is called Lako or Ter - a phenomenon where the brother-in-law inherits the widow (Jalako). As Oriare Nyarwath (1994) noted, "this custom is still the best alternative available to the Luo widow and which also provides for the care of the deceased brother's home, especially in the context of the Luo culture". However, it recommends a few adjustments to the practice to discourage some of the abuses that are associated with it, to make it amenable to contemporary realities.

For Nyarwath (1994), Lako has, in the recent past, particularly in Kenya, come under heavy criticism, especially from some feminist activists, government administrators, and academics. It has been accused, among other things, of being anachronistic, a violation of the widow's right to freedom of choice to re-marry or not, treating a widow as property to be inherited by a brother-in-law, and partly being responsible for the spread of HIV and AIDS. Many in Kenya believe that HIV and AIDS cases are some of the highest among the Luo. This belief is reinforced by the numerous TV and radio programmes that highlight the effects of the epidemic in Luo land. Interestingly, when funding is available for HIV and AIDS intervention, the figures for the high prevalence of the disease in Luo land are disputed.

Kirwen (1987) notes that the custom for widows must be seen as a temporary adjustment in the marriage of a deceased brother to ensure that his family achieves its goals as if he were alive. Moreover, if one refuses to care for a brother's wife, it shows that one did not love one's brother. It is believed that such a breach of trust could cause the deceased to put the evil eye on one and bewitch one, seeing how unjustly one has treated his wife and family. Furaha Charo, a widow from Kilifi, Kenya, was evicted from her matrimonial home by the in-laws after the death of her husband, dispossessing her of her land and house. If she were inherited by the deceased husband's brother, there would be a male figure to protect her, and the in-laws could not have evicted her. Many women suffer such a fate at the hands of their in-laws after refusing to sleep with their dead husband's brother to qualify to be inherited.

Many African cultures hold that women own property through their husbands. Therefore, when the husband dies and the wife is childless or has only daughters, the widows are most likely to lose every right to their husbands' ancestral lands. African patriarchal societies give men control over land, either with the notion that women are weak vessels and are incapable of handling property, or they fear that family land may pass to another family through the woman if she were to marry or remarry. Milazzo and Van de Walle (2018) believe that the African patriarchal culture leaves a woman at the mercy of the husband, especially as men are the providers and women, housewives in many African cultures. At the demise of the husband, the woman is exposed to selfish relatives whose desire is to disinherit the widow of land and other property owned by the deceased husband. Thus, the widow becomes desperate and unable to reject any overtures for forceful inheritance by the deceased's family member.

Levirate marriage becomes more complicated if the widow is a Westerner. For instance, Kenyan member of parliament, late Ken Okoth, had married a white woman. Upon his death, his Luo community elders wanted the widow to inherit. This drew mixed reactions among Kenyans, with some terming wife inheritance uncouth and immoral, while others felt that the African culture should be adhered to. This revealed a section of Kenyans who would go to any length to uphold wife inheritance, and on the other hand, those who would rather argue that the community move away from such an archaic practice. However, wife inheritance was accepted within the African traditional setting because the original intentions were good. Widows and the deceased children were taken care of, and the family tree was not lost. But like many other erstwhile good practices worldwide that become corrupted, wife inheritance has now been tainted as a means of sexual gratification by randy relatives and a desire to colonise the deceased's property if he was wealthy.

Overall, there are various reasons that societies may choose to practice levirate marriage. For some cultures – such as those in Africa – levirate unions provide the benefit of maintaining a family name and keeping ancestral land within a group. For other cultures – such as Mongol society – the levirate provides an economic benefit by allowing the family of the deceased husband to maintain the man's property and provide the deceased's brother with a bride without the expense of bride-price. The utilization of the levirate for economic purposes is one of the central themes of its use across cultures. The Kirghiz and traditional Igbo societies used levirate marriages to secure labour, which was a vital economic resource for subsistence farming and animal husbandry. However, the Igbo have also demonstrated the challenges that levirate marriage poses in modern times. With

the shift towards individualism and trade as the modern economic system of the Igbo, the relevance of levirate marriage has certainly abated.

Cultural Significance of Levirate Marriage

The fact that levirate marriages survive up to today means it has some advantages to the widow, the brother-in-law, or the family of the deceased as a whole. In Israel, the perpetuation of a deceased person's name was very important. Sons were born to take and to keep their father's names when they are gone. The son must also come from within the family unit, even if it is a brother having a son for the deceased brother (Deuteronomy 25:5-10). The practice, therefore, aided the name of the dead to live on within the society. Secondly, it ensured that land, which was properly the inheritance of males in traditional Africa, was not lost to foreigners. Land is an ancestral inheritance and should remain within the family through the bloodline. Mbiti confirms that this practice in Africa ensures continuity in that the 'I' continues in the 'We' even after an individual's death. It gives a deep sense of security in an otherwise insecure world. Hence, abandoning a widow together with her children, particularly in nomadic communities, was like death. Thus, this practice ensured the survival of the family, the clan, and the society. Property remained intact under the care of one family. Thirdly, this practice in Africa ensured sexual satisfaction for the widows, particularly the younger ones. In this sense, widows do not resort to "illicit sex" with multiple partners or sexual satisfaction through unnatural ways. They accepted a partner assigned by the family without shame, guilt, or fear. This arrangement also ensured the presence of a male provider and protector in situations where such was most needed, especially in families of little means. It allowed the brother-in-law to provide and support both the widow and her children. The practice also gives marriage permanence and durability beyond the death of a husband. The widow remains the legal owner of the home and a member of her husband's family, and her presence in her late husband's home gives the family stability and durability. This is strengthened when she has a "guardian" with whom she shares challenges that she might face.

Health and Human Rights Concerns about Levirate Marriage

Levirate marriage comes with its emotional, health, religious, and economic implications. The health implications of levirate marriage are evident in a report from Tanzania, which indicates that "the practice of inheriting widows may cause a surge in the number of HIV cases involving the inheritor and his co-wives, and there is also the risk of infecting widows who have earlier tested negative for the virus.

Olanisebe & Oladosu (2014) state that the death of a husband exposes women to tough living conditions such as sexual harassment, rejection, etc. Women may be coerced into levirate marriages, violating their right to autonomy and consent. The Kenya Human Rights Group documented several cases of widows in the rural areas who suffered forced inheritance or consequences of refusing to be inherited. In comparison to urban widows, rural widows are forced to undergo wife inheritance cleansing rituals. Those who underwent the cleansing rituals were allowed to keep their husbands' property, and those who did not were chased away. In some parts of Kenya, the kinsmen would hire a local person to have sex with the widow against her will and without protection (Human Rights).

Levirate marriages can lead to disputes over inheritance and property rights, particularly for women. Widows have lost property because the deceased husband's family does not regard the widow as their very own unless she inherited. Levirate marriage can perpetuate polygamy, potentially violating women's rights to equality and non-discrimination. Some women would rather be inherited against their wishes so that they are not thrown out of their late husband's home. They become slaves to the husbands' families, and the inheritor might even have had three or four wives already. In this regard, International Human Rights law may be violated, particularly the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). To protect women in Africa, the African Charter on Human and Peoples' Rights (ACHPR) was adopted in June 1981 by the Organization of African Unity (OAU). The African Union (AU) gives prominence to women rights in Article 2: "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, gender, language, religion, political or any other opinion, national and social origin, fortune, birth or other status." It is instructive to note, too, that certain African customs have restrictions or outright prohibitions of levirate marriage. For example, the Yoruba customary law (Nigeria) prohibits levirate marriage, except in cases where the parties' consent and the marriage are approved by the family and community. Similarly, the Akan Customary Law (Ghana) prohibits levirate marriage, except in cases where the parties' consent and the marriage are approved by the family and community.

Convergence and Divergence

We believe that levirate marriages were a common phenomenon in many societies of the world and not just in Africa. The points of convergence in Africa regarding the practice include that the marriage is never a new one, but a continuation of the old. In most communities in Africa, it is only a married man who takes care of a brother's home. It is not for a man without his family responsibilities to enter a

deceased brother's home to take care of his widow. The custom is driven by the need for a son to continue his father's progeny, inheriting land and being the symbol of male authority in the family. Involvement of the elders or the father of the deceased also seems common in African cultures. Among the Luo, the elders had to be present to confirm who the widow had selected among the brothers of her late husband. This appears in the episode of Judah and Tamar in which Onan is asked to get a son for his late brother Er (Genesis 38:8-9). The practice does not seem to involve any form of official wedding ceremony since the terms used for the ceremonies done are different from those of the official wedding. No son ever married his mother in any culture known.

Divergences could be cited in the following areas: - Brother-in-law in Israel seems to be restricted to blood brother, whereas in Africa, brothers extend to several other families in the kinship system. Widows in Africa can choose any brother-in-law from any close family within the clan. In Israel, the practice also seems to be between a brother-in-law and a widow left without children. In Africa, widows are taken care of even when they already have children with the deceased before death. Also, widows in Africa going an extra mile to disguise themselves as prostitutes to get children was very rare, though in the contemporary society full of challenges, those widows not given attention at home can resort to it in towns and not with their father-in-laws.

Legal Implications for Levirate Marriage in African Societies

Whether cultural practices that discriminate against women should be criminalized is an important question for policymakers. Similarly, eliminating cultural practices that discriminate against women has long been a matter of global concern, as seen in the 2015 Sustainable Development Goals set by the United Nations (UN) General Assembly (Goal 5.3). Therefore, whether these practices should be criminalized has attracted significant interest from policymakers and researchers, e.g., (Acemoglu and Jackson, 2017 & Aldashev *et al*, 2012). The legal implications of levirate marriage in African societies vary by culture and community. Levirate marriage can impact inheritance and succession rights, particularly for children born outside the levirate marriage. It can raise questions about parental rights and responsibilities, particularly for children born to the deceased husband. Levirate marriage can impact family support and maintenance obligations, particularly for the widow and her children. Contractually, levirate marriage can raise questions about the validity and enforceability of marriage contracts, particularly if the widow did not give her informed consent. Also, if the deceased owed debts, who is to be held responsible for payment of such debts, if the widow is forced into a levirate marriage? Though levirate marriage may be

recognized under customary law and practice, it may potentially be in conflict with statutory and constitutional law.

When theoretically analyzed, legal prohibition may decrease women's welfare by eliminating levirate marriage. This is because a widow inherited by the brother or other male relative of her deceased husband may be seen as a form of forced marriage. However, this practice is also anecdotally believed to provide social protection for widows due to their traditionally limited property rights. According to the developed game-theoretic analysis, this practice is positively viewed when a widow's other means of livelihood is limited and her husband's clan wishes to continue a family line by keeping sons of the deceased within his extended family. Legally prohibiting this practice may mean the decline of the widow's welfare. Thus, those who propose an outright ban on an "anti-social practice" that is seen as violating women's human rights may want to think twice. Alternatively, some of these matters can be referred to religious arbitration processes for resolution.

Owing to concerns regarding levirate marriage and other forms of unconventional and disadvantageous marriages, some national and international laws have been enacted for women's protection. Some of these laws prohibit levirate marriage. The following are to mention but a few:

1. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Article 16(1) (c) prohibits polygamous marriages, including levirate marriage, and
2. African Charter on Human and Peoples' Rights: Article 18(3) prohibits marriages that are contrary to the principles of equality and justice.
3. The South African Recognition of Customary Marriages Act 120 of 1998 prohibits levirate marriage, except in cases where the parties' consent and the marriage is registered.
4. The Nigerian Marriage Act (Cap 218, Laws of the Federation of Nigeria 1990) prohibits levirate marriage, except in cases where the parties' consent and the marriage is registered.
5. The Kenyan Marriage Act (Cap 150, Laws of Kenya) prohibits levirate marriage, except in cases where the parties' consent and the marriage is registered.
6. The Ghanaian Marriage Act 1884-1985 prohibits levirate marriage, except in cases where the parties' consent and the marriage is registered.
7. The Ugandan Marriage Act (Cap 251 Laws of Uganda) prohibits levirate marriage, except in cases where the parties' consent and the marriage is registered.

Conclusion

From the foregoing, there is no doubt that levirate marriage was a widely accepted practice in many cultures, even from biblical times. Despite some of its perceived advantages, there are issues surrounding the practice, especially with the changing legal and human rights environments. Having been caught up by modern civilisation and contemporary realities, communities where the practice is still found need to reassess it based on extant local and international legal instruments. This would ensure that women are not trapped in marital situations that are contrary to the law. If the practice is to be allowed, it should be only in limited circumstances, with the informed consent of the widow and within the ambit of available laws. A major limitation to be noted on the one hand is that cultural and social norms like levirate marriage are deeply rooted in some African cultures and societies, making it difficult to completely eradicate. On the other hand, the enforcement of both the local and international legal instruments for the protection of women from unconventional practices like levirate marriage is often challenging. Thus, laws and regulations prohibiting levirate marriage are often poorly enforced, particularly in rural areas. Additionally, the dearth of education and awareness is a challenge as well. Considering that many people are unaware of the laws and regulations prohibiting levirate marriage, there is a need for education and awareness-raising initiatives.

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